

VETO OF SENATE BILL.

June 30, 1876.³⁰

Hon. R. B. Hubbard, President of the Senate:

Sir.—I have the honor to return herewith, without my approval, Senate bill No. 140, being “An Act to provide for the filling of vacancies in the offices of district clerk and constable,” and respectfully ask its reconsideration, for the following reasons:

I see no objection to the first clause of the bill, which authorizes district judges to fill vacancies in the office of district clerks by appointment, to hold until the next general election.

The second clause, which provides that in counties of less population than eight thousand, district judges shall have power to appoint an officer, who shall discharge the duties of both the district and

³⁰Senate Journal, 425-426.

county clerks' offices, with a proviso that when persons have been elected to said offices they shall not be affected by this bill, and that it shall operate in such cases only when vacancies occur in them, is believed to be seriously objectionable, on constitutional and other grounds.

The proviso to Section 20, Article 5, of the Constitution, provides, "that in counties having a population of less than eight thousand persons, there may be an election of a single clerk, who shall perform the duties of district and county clerks." The Constitution, however, nowhere prescribes any means, or lays down any rule, or confers upon any officer the authority for ascertaining when counties have less than eight thousand population. Consequently, when issuing this proclamation for the late election, the Executive could not enforce that requirement of the Constitution, and did not order elections under it; and in his regular message to the Legislature, called attention to the necessity for legislation which should provide a mode for determining what counties, by reason of having less than eight thousand population, are affected under this clause. In some counties in the State, without any authority of law, elections were held for an officer to discharge the duties of both county and district clerk; and in some others the same person was voted for and elected as county clerk and as district clerk. In such cases it is believed that the election, so far as the attempt to consolidate the two offices in one is concerned, are null; nor is it believed that the Legislature can give them validity. When the same person has been elected to the two offices of county and district clerk, or to discharge the duties of both, he should be required to choose one and to surrender the other. If, under such requirement, the office of district clerk should become vacant, under Section 9, Article 6, of the Constitution, the district judge would fill the vacancy by appointment until the next general election. If the office of county clerk should become vacant, under Section 20, of the same article, the commissioners' court would fill the vacancy by appointment until the next general election. A general law, carrying out the proviso to Section 20 referred to, giving a name and designation to the officer to discharge the duties of the two offices of county and district clerk, in counties having less than eight thousand population, prescribing a rule for determining what counties it is to operate in, etc., is deemed necessary, and it is suggested that the election, under it, would be better deferred until the next general election.

The present bill provides for appointment, and makes no provision for the future election of an officer to perform the duties of both county and district clerk, when the Constitution requires that

officer elected. Its legal effect would be to validate elections held under the proviso to Section 20, which, in my judgment, cannot be done, but should be provided for in advance by a general law for enforcing the proviso throughout the State.

It again, in counties of less than eight thousand population, when both district and county clerks have been properly and lawfully elected, upon the happening of a vacancy in either one of the offices, authorizes the district judge, in effect, to oust the incumbent of the other, although duly elected by the people, and appoint one person to discharge the duties of both.

The caption of the bill, referring only to district clerks and constables, is not believed to be sufficiently comprehensive to embrace all the matters disposed of in the bill.

RICHARD COKE.